

FEBRUARY 7, 2008

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CHESTER LEON JONES, PRO SE,	§	
A.K.A. CHESTER LEON JONES, JR.,	§	
TDCJ-CID #440472,	§	
Previous TDCJ-CID #391758,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:07-CV-0001
	§	
NATHANIEL QUARTERMAN,	§	
TEXAS BOARD OF PARDONS	§	
AND PAROLES, and	§	
GREG PIPES, Tarrant County D.A.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER DISMISSING DEFENDANT PIPES

Plaintiff CHESTER LEON JONES, also known as CHESTER LEON JONES, JR., acting pro se, has filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and has been granted permission to proceed in forma pauperis.

By his Amended Complaint, plaintiff complains defendant PIPES “allowed the false arrest reports to be passed to the Co-DEFENDANTS [upper case in the original].”

The Court notes plaintiff’s sentencing date was in 1986, and he pleads no fact indicating defendant PIPES committed any act or omission related to his claims after that date.

JUDICIAL REVIEW

When a prisoner confined in any jail, prison, or other correctional facility brings an action with respect to prison conditions under any federal law, the Court may evaluate the complaint and dismiss it without service of process, *Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir.

1990), if it is frivolous¹, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. 42 U.S.C. 1997e(c)(1). A *Spears* hearing need not be conducted for every *pro se* complaint. *Wilson v. Barrientos*, 926 F.2d 480, 483 n.4 (5th Cir. 1991)².

The Magistrate Judge has reviewed plaintiff's pleadings and has viewed the facts alleged by plaintiff to determine if his claim presents grounds for dismissal or should proceed to answer by defendants.

THE LAW AND ANALYSIS

There is no federal statute of limitations for civil rights actions; therefore, the two-year Texas general personal injury limitations period is applied. *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993).

Plaintiff waited until January 4, 2007 to file his original complaint and did not move to amend it to include defendant PIPES until July 19, 2007, long after expiration of the statute of limitations.

Limitations has expired, and any claims plaintiff is attempting to assert against defendant PIPES have expired with it. Consequently, plaintiff's claim lacks an arguable basis in law and is frivolous. *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

¹A claim is frivolous if it lacks an arguable basis in law or in fact, *Booker v. Koonce*, 2 F.3d 114, 115 (5th Cir. 1993); *see, Denton v. Hernandez*, 504 U.S. 25, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992).

²*Cf. Green v. McKaskle*, 788 F.2d 1116, 1120 (5th Cir. 1986) ("Of course, our discussion of *Spears* should not be interpreted to mean that all or even most prisoner claims require or deserve a *Spears* hearing. A district court should be able to dismiss as frivolous a significant number of prisoner suits on the complaint alone or the complaint together with the *Watson* questionnaire.").

CONCLUSION

Pursuant to Title 28, United States Code, sections 1915A and 1915(e)(2), as well as Title 42, United States Code, section 1997e(c)(1),

IT IS HEREBY ORDERED that the Civil Rights Complaint filed pursuant to Title 42, United States Code, section 1983, by plaintiff CHESTER LEON JONES, also known as CHESTER LEON JONES, JR., against defendant GREG PIPES, Tarrant County D.A., be DISMISSED WITH PREJUDICE AS FRIVOLOUS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

A copy of this Order shall be mailed to plaintiff and to any attorney of record by first class mail. The Clerk shall also mail copies of this Order of Dismissal to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

ENTERED this 7th day of February, 2007.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE